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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,187	11/05/2003	Gordon Charles Dodson	FUU 0017 VA/40929.68	7538
7590 09/20/2005 DINSMORE & SHOHL LLP Suite 500 One Dayton Centre Dayton, OH 45402-2023			EXAMINER FIDEI, DAVID	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,187

Applicant(s)

DODSON ET AL.

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-22 is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere does the specification, as originally filed, set forth the present invention is constrained to a plurality of non-opposing pliable projections. It is not clear what is to be construed as non-opposing as the subject matter is not described in any detail. The drawings are of no particular value in providing support for the new limitation as the present specification, page 8 states the following;

“More specifically, although some aspects of the present invention are identified herein as preferred or particularly advantageous, **it is contemplated that the present invention is not necessarily limited to these preferred aspects of the invention** (emphasis added).”

Also, The disclosure must describe the claimed invention with all its limitations. See Tronzon v. Biomet Inc., (Fed. Cir. 1998); Lockwood v American Airlines Inc., (Fed. Cir. 1997).

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what is considered “non-opposing” as originally disclosed.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-12, 15, 16 and 23 rejected under 35 U.S.C. 102(b) as being anticipated by Crane et al (Patent no. 3,363,390). In figures 2-5 Crane et al discloses a member defining an extruded cross section, said extruded cross section extending along substantially an entire length of the member and comprising: a structural framework formed of a relatively rigid extruded plastic material; a channel 13 formed in said extruded cross section along an exterior face of member; and at least one pliable projection 15 formed of a relatively pliable plastic material extending from said structural framework, see col. 1, lines 67-71, col. 2, lines 48-49 and col. 3, line 46 to col. 4, line 12.

As to claims 2, 3, the external framework is formed by members 11, 12, 12a, 17 and the internal framework is formed by members 16, 18.

As to claims 4, 16 and 23, the at least one pliable projection 15 comprises a set of projections extending from the external support as shown in figures 2-5.

As to claim 5, the channel is open to an exterior of member and defines a substantially planar recessed surface at 16 partially bounded by sidewalls defined by perpendicular lips 14.

As to claim 6, the sidewalls defined by lips 14 of said bundling channel are substantially perpendicular to said recessed surface of said channel.

As to claims 7-9, the recessed surface 16 is supported by an internal framework 18.

As to claim 10, the substantially planar recessed surface 16 extends along substantially an entire length of said bundling channel parallel to an opposing exterior face of said structural framework.

As to claim 11, it appears the recessed surface 16 is at least 25% the average width dimension of the member since member 16 extends all but the thickness width of the member.

As to claim 12, the extruded member manifestly defines at both ends a cross section that is open at whatever length the extruded member is constructed. Thus the substantially planar recessed surface is unbounded at opposite ends of said bundling channel.

As to claim 15, a structural cross section, in figures 2-4, is defined that assumes a higher value in areas of the pliable projections and a lower value in areas outside of the projections.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dallaire (Patent no. D263,754) in view of Crane et al (Patent no. 3,363,390). In figures 1 and 2 a member defining an extruded cross section, said extruded cross section extending along substantially an entire length of the member and comprising: a structural framework formed; a channel formed in said extruded cross section along an exterior top face of member; and at least one projection 15

formed in the channel. The difference between the claimed subject matter and Dallaire is that no disclosure of material is provided.

However, to construct the member of relatively rigid extruded plastic material with at least one pliable projection is taught by Crane et al as explained above. It would have been obvious to one of ordinary skill in the art to construct the extruded member of Dallaire to construct the member of relatively rigid extruded plastic material with at least one pliable projection, in order to form engagement surfaces.

As to claim 13, another channel is provided at the bottom of the component of Dallaire.

Allowable Subject Matter

5. Claims 19-22 are allowed.

Response to Arguments

6. Applicant's arguments filed July 8, 2005 have been fully considered but they are not persuasive. The subject matter added by applicant is not supported in the present disclosure as originally filed in such a manner such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, that applicant has limited the present invention to "non-opposing pliable projections" whatever that may encompass.

On page 5, last paragraph, of the previous office action, the Examiner stated applicant's response should point out where support is found in the specification for any subject matter added to claims. This is provided in M.P.E.P. 2163 II(A) where the strong presumption that an adequate written description of the claimed invention is present in the specification as filed, Wertheim, 541 F.2d at 262, 191 USPQ at 96; however, with respect to newly added or amended claims, applicant should show support in the original disclosure for the new or amended claims as described.

In the present invention, it is interesting how face 35 is described as "opposing" to surface 32, page 5, line 10. Also surface 12 is in opposing relationship to exterior face 35, page 5

lines 23-24. Opposing is defined by dictionary.com as “to place opposite in contrast or counterbalance” or “to place so as to be opposite something else”. Opposite is then defined as “placed or located directly across from something else or from each other. While surfaces 12 and 35 are described as opposing one another in the specification as originally filed, it is not seen how the projections 40 now defined as “non-opposing” in response the prior art application can be anything more than an afterthought.

While applicants’ detailed analysis of the prior art is appreciated, nowhere do they show where the present invention contemplates non-opposing pliable projections or what is meant by “non-opposing”. Indeed, it would seem the present invention has opposing surfaces (12, 35) with pliable projections in the same vain as Crane has opposing flanges 12 with pliable projections. Similarly, it is not agreed Dallaire fails to disclose the claimed subject matter in as much as was originally disclosed. Accordingly these rejections have been maintained.

As to claim 23, the claim remains unchanged nor rejection contested. Accordingly, it would appear the subject matter is conceded.

Conclusion


7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David T. Fidei
Primary Examiner
Art Unit 3728

dtf
August 8, 2005